



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 27

SALES OF PREPARED FOOD

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

The contents of this Bulletin are generally applicable to restaurants, caterers, sandwich shops, snack bars and other businesses which ordinarily make sales of prepared food products. Persons not engaged in similar activities should refer to Bulletin No. 12, Grocers.

Section 1760, sub-§3 of the Maine Sales and Use Tax Law provides an exemption for sales of grocery staples. Grocery staples, as defined in 1752, sub-§3-A, excludes prepared food and certain other products intended for internal human consumption.

Effective October 1, 2001, the sales tax rate on the sale of prepared food is 7%.

1. TAXABLE SALES OF PREPARED FOOD

Prepared food, as defined in 1752 sub-§8-A, is subject to sales tax regardless of the location from which it is sold, whether for consumption on the premises or for take-out. The following addresses the application of tax to specific businesses:

a. Restaurants. All sales of prepared foods from restaurants are subject to sales tax at the rate of 7%. This includes all meals served on or off the premises as well as food sold on a "take-out" or "to go" basis.

A restaurant may also be engaged in selling food products that are otherwise deemed "grocery staples" and which would be exempt from sales tax. Examples of valid exempt sales are:

- whole pies or cakes
- bread
- quarts of milk, or larger
- bags of coffee beans or grinds
- meat, fish, poultry
- packaged quarts of ice cream
- sales of 6 or more doughnuts, muffins, cookies, pastries, bagels, etc. (of like kind)

All sales of beer, wine, and other alcoholic beverages for consumption on the premises of the retailer are subject to sales tax at the rate of 7%.

b. Sandwich Shops, Pizza Shops, Dairy Bars, Bakeries, Doughnut and Bagel Shops.

Sandwich shops, pizza shops, dairy bars, bakeries, doughnut and bagel shops whose sales of prepared food constitute 75% or more of their gross receipts are required to charge 7% tax on all of their sales of food and drinks requiring no further preparation, whether prepared by the retailer or not. This would include, but not limited to, items such as chips, milk, soda, juice, pastries, ice cream, candy, etc., except “bulk sales of grocery staples” (see Section 4 below.) The 7% rate must be charged on all sales of food and drinks requiring no further preparation regardless of whether seating facilities are provided on the premises.

In calculating whether 75% of gross receipts are attributable to the sale of prepared food only two factors are considered: 1) the sales of food prepared by the retailer and 2) total sales. If dividing (1) by (2) generates a percentage of more than 75%, then the retailer is required to collect 7% on all of the sales of food and drinks requiring no further preparation. Food prepared by the retailer does not include sales of “bulk grocery staples”. Therefore, a bakery for instance, would not include sales of loaves of bread, whole pies or cakes, etc. in calculating their “food prepared by the retailer” amount. Total sales includes all receipts by the retailer, including grocery staples, prepared food, cigarettes, beer, wine, soda, candy, gasoline, rental income from the rental of space at the retailer’s site, such as space for vendors, room rentals, campsite rentals, admission fees, and equipment rentals.

Ice cream novelties sold from a dairy bar are subject to tax when sold individually. When sold in quantities of 6 or more, they will be exempt as the sale of a grocery staple.

All sales of beer, wine, and other alcoholic beverages for consumption on the premises of the retailer are subject to sales tax at the rate of 7%.

When a franchised restaurant facility is located within a convenience store, all sales that are made from the restaurant facility are subject to tax at 7% even if the overall facility does not meet the 75% rule. This would mean that sales of containers of juice, milk, chips, pastries, etc., would be subject to tax at 7% when made from the restaurant section of the facility. Such sales made from the convenience store section would be exempt as grocery staples.

c. Caterers. Sales of food or meals by caterers are taxable since they are of the type included in the definition of prepared food. All caterer’s must charge 7% sales tax on all sales in connection with a meal, regardless of where the food is being served.

If a caterer contracts with a person to serve a meal and the purchase by the person is for resale, the sale would be exempt from tax. The sales tax responsibility on the subsequent sale to the public rests on the entity purchasing the meal. If the person does not present a resale certificate or if the meal is not being purchased for resale, the caterer would charge tax.

Any charges, even if separately stated, that are directly in connection with the sale of the meal, i.e., charges for labor, linen, place settings, utensils, etc. would be subject to tax at 7%.

Other incidental charges such as charges for tables, chairs, rentals of equipment, use of centerpieces, etc., would not be subject to tax. Any other sales of tangible personal property, such as centerpieces, cake knives, decorations, etc., would be subject to sales tax at 5%.

d. Street Vendors. Sales of food products from roadside stands and other locations such as popcorn or hot dog carts, lunch wagons, carnival or fair concessions or by vendors at athletic events will normally fall within the definition of prepared food for immediate consumption. Thus, sales of food products by such retailers are taxable at the rate of 7%.

e. Grocery and Convenience Stores. Grocery and convenience stores and supermarkets may sometimes make sales of hot soups, individual salads, sandwiches, steamed hot dogs and other prepared foods. Heated food or drinks and sandwiches requiring no further preparation are taxable at the rate of 7%, as a meal, when sold by a grocer or a convenience store. All other sales of food and drink prepared by the retailer are subject to tax at the rate of 7%. This includes food products made available by a retailer from a self serve food area designed to offer customers food for immediate consumption, that are not individually prepackaged for resale. This would include salad bars and “coffee nooks”.

All sales of grocery staples would be exempt from sales tax. The sale of all other taxable items, i.e. cigarettes, soda, beer, wine, cleaning supplies, would be subject to tax at the rate of 5%. Grocers should refer to Bulletin No. 12 for further information.

2. EXEMPT SALES OF MEALS

a. School meals. As provided by 1760, sub-§6-A, sales of meals served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school are exempt. Sales of meals made in the school lunchroom during the normal school day, or by a school or student organization at a school event where it is evident that those in attendance are mainly students and teachers, will be considered exempt. If, however, meals are served to students or teachers by a caterer or other person not associated with the school, such sales are taxable.

The law also provides in 1760 sub-§64 an exemption for sales of goods and services by schools, student organizations, booster clubs and parent-teacher associations. Sales of meals by any of these organizations to a group not consisting of students or teachers would qualify for exemption provided the profits are used to benefit the school or student organization or are donated to charity.

b. Hospital meals. Sales of meals, food and drink to patients of hospitals licensed by the State for the care of human beings are exempt from sales tax. Also exempt are sales of meals, food and drink by other institutions licensed by the State for the hospitalization or nursing care of human beings.

c. Meals for the elderly. Sales of meals by hospitals, schools, long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly, are exempt from sales tax. The seller of such

meals is required to obtain an exemption certificate, issued by Maine Revenue Services, from the incorporated nonprofit area agency purchasing the meals.

d. Employee meals. When the value in money of meals furnished by an employer to an employee at the place of employment is credited against the wages of the employee, no tax will apply. This situation will be deemed to exist only where a certain set amount for meals is credited towards the wages of the employee regardless of whether meals are actually consumed. Please note that this exemption is applicable only when the meal is provided at the place of employment. If no set amount is credited for meals and the employer makes a charge for meals actually furnished to the employee as a payroll deduction, the charges will be considered taxable.

e. Congregate housing facilities. Sales of meals to residents of incorporated nonprofit church-affiliated congregate housing facilities for the elderly in which at least 75% of the units are available for leasing to eligible lower-income residents are exempt from sales tax.

f. College employees. Sales of meals to college employees when the meals are purchased with college-issued debit cards are exempt from tax.

g. Sales by Auxiliary Organizations of American Legion. Sales of meals and related items and services by a nonprofit auxiliary organization of the American Legion in connection with a fund-raising event sponsored by the auxiliary organization if the meals and related items and services are provided in a room that is separate from the lounge facilities.

3. ITEMS THAT ARE NOT GROCERY STAPLES

Grocery staples as defined in §1752(3-B), excludes certain products for internal human consumption. The following items are not considered grocery staples and accordingly are subject to tax regardless of the location from which they are sold:

- alcoholic beverages;
- soft drinks;
- prepared food;
- liquid iced tea;
- ice;
- nonprescription medicines;
- any bottled water;
- dietary substitutes and supplements or adjuncts in liquid, powdered, granular, tablets, capsule, lozenge or pill form;
- candy and confections.

4. BULK SALE OF GROCERY STAPLES

The definition of “prepared food” does provide one exclusion. “Bulk sales of grocery staples” are exempt regardless of the location from which they are sold. Some examples of food prepared by the retailer that qualify as bulk sales of grocery staples are:

- pies, cakes, desserts and bread and bread products, except those packaged as a single serving
- donuts, muffins, pastries, cookies, etc. sold in quantities of 6 or more, these items must be of like kind
- products sold in the “deli case”, such as salads, luncheon meats and cheese, except sandwiches and food prepared for sale in a heated state regardless of cooling which may have occurred prior to the sale
- ice cream packaged in quart or larger containers, maple syrup, jam, jellies, pickles, honey, and spaghetti sauce

For retailers who meet the 75% rule, “bulk sales of grocery staples” also include:

- a bag of coffee
- salad dressing
- drinks, including milk and juice, in quart or larger containers
- potato chips, corn chips and similar items packaged in 6 ounce or larger containers
- packages of cookies, crackers, etc. except those packaged as a single serving

5. GRATUITIES AND SERVICE CHARGES

Where a customer provides a tip for an employee of a seller, the tip is not subject to the sales tax. The tip, however, must be provided wholly in the discretion or judgment of the customer. The tip is exempt whether given directly to the employee in cash or added by the customer to a charge account. If added to a charge account, the tip is exempt only if the full amount of such tip is turned over to the employee by the seller.

An amount or flat percentage charged or collected in lieu of a gratuity, and designated as a service charge by the seller is not part of the selling price when it is to be disbursed by the seller to employees as wages. Otherwise, such amounts must be included in the seller's gross receipts subject to tax even though the amount of flat percentage may be paid over in part to the employees.

6. PURCHASES

When a restaurant or caterer make purchases for use in its business, some purchases will be exempt as purchases for resale, (i.e. items sold as part of a meal), some will be exempt as purchases of packaging material (i.e. styrofoam meal containers, paper plates), and some purchases will be considered taxable, (i.e. cleaning supplies, dishes, cooking utensils).

a. Purchases for Resale. When a food preparer purchases tangible personal property for resale, the food preparer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the food preparer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, each time a purchase is made the food preparer must state to the supplier whether each particular purchase is for resale or not, and will be held responsible for the tax on any item purchased for resale but subsequently used by the food preparer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.**

The broadest category of purchases for resale by food preparers consists of food products which will become part of a meal sold to their customers. For any food products that do not qualify as a "grocery staple" as defined by 36 M.R.S.A. §1752-3B, a resale certificate must be supplied by the food preparer to the supplier in order to purchase these items without paying sales tax. For food products that do qualify as "grocery staples" as defined by §1752-3B, a resale certificate is not necessary.

Also, there are other, normally taxable, items that may be purchased by a food preparer which become part of the meal being sold; and are therefore, eligible to be purchased for resale by providing a resale certificate to the supplier. The following is a non-exclusive list of items which would be considered part of the cost of the meal.

Condiments	Disposable Bibs	Disposable Utensils
Disposable Napkins	Disposable Tablecloths	Moist Hand Towelettes
Disposable Placemats	Salt & Pepper	Stirrers
Straws	Toothpicks Served in Food	Trayliners

b. Packaging Materials. Purchases by food preparers of containers and packaging materials used to package the goods that they sell to their customers are not taxable. Food preparers may purchase items that fall into this category without payment of tax by furnishing the supplier with a resale certificate as provided in Rule 301. **Please note, packaging material only qualifies for this exemption if it is transferred to the customer with the product sold.** If similar products are used for storage or containment solely for use within the food preparer's business, it would not qualify for this exemption. Following is a non-inclusive list of examples of items which would be considered to qualify as packaging material for food preparers.

Coated Wrapping Paper	Disposable Cups	Disposable Plates
Paper Bags	Disposable Containers	Foil or Plastic Wrap
Tape	Rubber Bands	Plastic Bags
Sandwich Bags		

In order to qualify for this exemption the items **must** be used to package food for sale to customers. If any of the above items are purchased for any other use by the taxpayer they would not qualify for the exemption and tax should be paid to the supplier. If tax is not paid to the supplier at the time of purchase, the food preparer will be responsible for the tax.

c. Taxable Purchases. Purchases of tangible personal property, other than those discussed in sections a & b above, made by the food preparer are subject to sales tax. These items include, but are not be limited to the following:

Dishes	Cleaning Supplies	Maintenance Supplies
Furniture	Cooking Utensils	Appliances
Linens	Complimentary Trinkets	Silverware
Guest Checks	Office Supplies	Menus
Serving Trays	Uniforms	Safety Products

If a food preparer finds that in the course of doing business it purchases products that are used for both taxable and exempt purposes (for example, plastic wrap, which could be used to wrap products sold to customers but also to cover and store food) it is the responsibility of the food preparer to account for the tax based on the average percentage that is used for taxable purposes.

7. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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ATTACHMENT #1

Excerpts taken from 36 M.R.S.A.

Section 1752 - Definitions

3-B. Grocery staples. "Grocery staples" means food products ordinarily consumed for human nourishment.

"Grocery Staples" does not include spirituous, malt or vinous liquors; soft drinks, iced tea, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection with bars or soda fountains; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice; dietary substitutes; candy and confections; and prepared food.

5-B. Liquor. "Liquor" has the same meaning as in Title 28-A, section 2, subsection 16.

8-A. Prepared Food. "Prepared food" means:

- A. Meals served on or off the premises of the retailer;
- B. Food and drinks that are prepared by the retailer and ready for consumption without further preparation; and
- C. All food and drinks sold from an establishment whose sales of food and drinks that are prepared by the retailer account for more than 75% of the establishment's gross receipts.

"Prepared food" does not include bulk sales of grocery staples.

14. Sale Price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise...

B. "Sale price" does not include:...

(5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;

Section 1760 - Exemptions

3. Grocery Staples. Sales of grocery staples.

6. Certain meals. Sales of meals:

A. Served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school;

B. To patients of hospitals licensed by the State for the care of human beings and other institutions licensed by the State for the hospitalization or nursing care of human beings, or institutions, agencies, hospitals, boarding homes and boarding houses licensed by the Department of Human Services under Title 22, Subtitle 6, and Title 22, section 1781;

C. By hospitals, schools, and long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly; and

D. To residents of incorporated nonprofit church-affiliated congregate housing facilities for the elderly in which at least 75% of the units are available for leasing to eligible lower-income residents; and

E. Served by colleges to employees of the college when the meals are purchased with debit cards issued by the colleges.

64. Schools and school-sponsored organizations. Sales of goods and services by public and private elementary and secondary schools that otherwise qualify as a school under section 1760, subsection 16, and student organizations sponsored by those schools, including booster clubs and student or parent-teacher organizations, provided the profits from those sales are used to benefit those schools or student organizations or are used for a charitable purpose.

75. Certain meals and lodging. Meals or lodging provided to employees at their place of employment when the value of those meals or that lodging is allowed as a credit toward the wages of those employees.

84. Certain sales by auxiliary organization of American Legion. Sales of meals and related items and services by a nonprofit auxiliary organization of the American Legion in connection with a fund-raising event sponsored by the auxiliary organization if the meals and related items and services are provided in a room that is separate from the lounge facilities, if any, of the American Legion and patrons are prohibited from taking alcoholic beverages from the lounge facilities to the separate room where the meals and related items and services are provided.

Section 1811 - Imposition of Sales Tax

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

Other Sources of Reference:

See Rule 301